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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,902	01/05/2004	Samir S. Shibani		2011

7590 10/10/2008  
James C. Wray  
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McLean, VA 22101

EXAMINER
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JOHNSON, EDWARD M

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



Control Number: 10/750,902

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10/10/08

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Mailed:

In re application of

Dale A. Davison

Serial No. 10/750,902

Filed: January 5, 2004

For: COMBINED CHEMICAL AGENT AND DYNAMIC  
OXIDATION TREATMENT OF HAZARDOUS GAS

DECISION ON  
PETITION

This is a decision on the PETITION TO WITHDRAW RESTRICTION 37 CFR 1.144 MPEP 818.03(C) filed June 9, 2008.

On June 28, 2007, a restriction requirement was mailed. The restriction requirement included a restriction between method and apparatus claims. On July 30, 2007 a response to the restriction requirement was filed and the claims to the method were elected with traverse. On October 18, 2007 a non-final office action was mailed. This office action withdrew claims 1-13 from consideration and made the restriction requirement final. A final Office Action was mailed March 14, 2008.

On June 9, 2008 the instant petition was filed to formally request that the restriction requirements be withdrawn.

## DECISION

First, applicant argues that the restriction between the apparatus and method claims is improper because the method and apparatus claims are not drawn to independent and distinct inventions. The examiner takes the position that the inventions are independent and distinct since the apparatus as claimed could be used to practice another and materially different process or the process can be carried out by another and materially different apparatus. The examiner has stated that the apparatus could be used to practice a materially different process, such as a

Art Unit: 1700

process for specific treatment of NO<sub>x</sub>, SO<sub>x</sub> and or halogens. The examiner has also stated that the process could also be practiced by a materially different apparatus, such as an apparatus comprising a specific catalytic and/or absorbing means.

Petitioner argues that the two examples given by the examiner are meaningless and do not consider the claims as claimed. An analysis of the examples follows. With respect to the statement that the apparatus could be used to practice a materially different process, such as a process for specific treatment of NO<sub>x</sub>, SO<sub>x</sub> and or halogens it is submitted that the process as claimed is not limited to the treatment of particular gasses and thus the method proposed by the examiner is not materially different. Further, with respect to the statement that the process could also be practiced by a materially different apparatus, such as an apparatus comprising a specific catalytic and/or absorbing means, it is submitted that the apparatus claims contain open claim language (i.e. comprising) which would not preclude the inclusion of catalytic and/or absorbing means. Therefore the apparatus proposed by the examiner is not materially different from that claimed.

Accordingly, the restriction requirement as set forth in the office action of June 28, 2007, between the method and apparatus is improper and should be withdrawn. The instant petition is **GRANTED.**

/JACQUELINE STONE/

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